

McNamara Declaration

Exhibit 157

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
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4

5 HACHETTE BOOK GROUP, INC.,
6 HARPERCOLLINS PUBLISHERS LLC,
7 JOHN WILEY & SONS, INC., and
8 PENGUIN RANDOM HOUSE LLC,

9 Plaintiffs,

10 vs.

No. 1:20-cv-04160-JGK

11 INTERNET ARCHIVE and DOES 1
12 through 5, inclusive,
13 Defendants.
14 _____/

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16 DEPOSITION OF MICHAEL "MEK" KARPELES
17 Remote Zoom Proceedings
18 Somerville, Massachusetts
19 Wednesday, October 27, 2021
20

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22
23 REPORTED BY:

24 LESLIE ROCKWOOD ROSAS, RPR, CSR 3462
25

1 be internal email at Internet Archive?

2 A. What is internal email?

3 Q. Well, between Internet Archive employees.

4 A. I don't recall exactly who was on the emails. I
5 would have to see the documents again.

6 Q. Okay. What is your current job title?

7 A. I'm not positive. I would probably say that my
8 job title officially is senior software engineer.

9 Q. Why are you unsure about your job title?

10 A. At least on my team, job titles are seldom used
11 in any capacity.

12 Q. Who do you work for? Who's your employer?

13 A. The Internet Archive.

14 Q. That's the defendant in this action?

15 A. Yes.

16 Q. And have you described yourself as the program
17 lead for OpenLibrary.org?

18 A. Yes, I have described myself as that.

19 Q. Have you also described yourself as running
20 OpenLibrary.org?

21 A. I have said that before.

22 Q. When did you first become an Internet Archive
23 employee?

24 A. In April of 2016.

25 Q. And when you became an Internet Archive employee

1 from Libgen, and then uploaded those copies to the
2 Internet Archive's website?

3 MS. LEE: Objection. Lacks foundation.

4 THE WITNESS: I have no idea what Aaron Zimm may
5 or may not have done.

6 Q. BY MR. ZEBRAK: Okay. And can you turn your
7 attention to Exhibit 153, please?

8 (Exhibit 153, INTARC00374675 - 76, marked for
9 identification electronically by counsel.)

10 Q. BY MR. ZEBRAK: It's a document that bears the
11 Bates Number INTARC 374675.

12 A. Just waiting for it to load.

13 I see 153. Yes, I can see this document.

14 Q. Do you recall sending this email to LeadSongDog?

15 A. I don't have a specific recollection of -- of
16 this email. And that's probably because there is a --
17 the subject means that this conversation may have
18 occurred on GitHub rather than email.

19 Q. Right.

20 It indicates that you wrote the email to
21 LeadSongDog; correct?

22 A. No, it doesn't. It -- it suggests that there
23 would have been a conversation on GitHub which resulted
24 in an email notification being sent to Brenton.

25 Q. Did you write the text that is in the body of

1 this email?

2 A. I believe from what I'm writing that -- that,
3 yes.

4 Q. And who is LeadSongDog? Do you know?

5 A. I don't know who LeadSongDog is, other than they
6 are a contributor -- a volunteer to the Open Library
7 project.

8 Q. So this is -- the text is content you wrote to
9 one of the volunteers for OpenLibrary.org; right?

10 A. I believe that's correct.

11 Q. And if you look in the third paragraph that
12 begins with, "While a book cover."

13 Do you see that paragraph?

14 A. I do.

15 Q. And in the second sentence, you indicate that --
16 that, "We are competing for eyeballs with Overdrive,"
17 among others; correct?

18 A. The sentence says that it's a reality that, "We
19 are competing for eyeballs with Amazon, Goodreads,
20 Overdrive, OCLC WorldCat and countless other websites."

21 Q. So Overdrive was one of the sites that you were
22 competing for eyeballs with; correct?

23 A. I imagine that Costco is one of the websites
24 that we are competing for eyeballs with.

25 Q. My question to you, sir, is not about Costco.

1 My question is: You wrote here that Overdrive is one of
2 the websites that you were competing for eyeballs with;
3 correct?

4 A. No more so than any of the other websites listed
5 in this sentence.

6 Q. And in the last paragraph, you wrote that:
7 "There are tens of thousands of readers on Open Library
8 who are looking for romantic novels, self-help books,
9 kids books, and modern thrillers"; correct?

10 A. I believe that's correct.

11 Q. And that's an accurate statement; correct, that
12 many of Open Library's individuals that use it are
13 looking for those types of books?

14 A. I don't see any analytics that would make me
15 believe that I meant anything, other than to colloquially
16 use a number for reference back in 2017 on a GitHub
17 developers' chat channel.

18 But I do see that written here.

19 Q. Okay. Well, I think we're done for the day.

20 MR. ZEBRAK: Thank you, Counsel, and
21 Mr. Karpeles for your time. And especially our
22 stenographer -- court reporter and videographer as well.
23 I know it's been a long day for everyone, so thank you
24 for your time.

25 MS. LEE: Yeah, thank you so much.

1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)
3

4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do
5 hereby certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel for
17 any party to said action, nor am I related to any party
18 to said action, nor am I in any way interested in the
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 2nd day of November, 2021.
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25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462